

University of Canterbury

## **Andrew Miller and his Eagles**

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### **American Citizens, British Subjects and Rights in the Impressment Controversy**

This dissertation is submitted in part fulfilment of the requirements for the degree of B.A. Honours in History at the University of Canterbury. This dissertation is the result of my own work. Material from the published or unpublished work of other historians used in the dissertation is credited to the author in the footnote references. The dissertation is approximately 10,105 words in length.

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## **Abstract**

In 1812 impressment was left as the implied cause for the outbreak of war between Britain and the United States of America. Scholars have focused on how impressment was involved in diplomacy. There remains, however, a lack of investigation into the justification of impressment. This dissertation explores the impressment of Americans by the Royal Navy and the resulting fallout. The research will focus on one group in particular: naturalised American citizens. The aim is to show that the conflict over impressment stemmed from Britain and America possessing different conceptualisations of citizenship and rights. The dissertation examines the history of impressment in Britain and the doctrine of indefeasible allegiance together with American arguments against the doctrine. This research is based on the correspondence of politicians, treatises, laws and secondary scholarship. Using these sources a narrative of diplomacy and rights will be constructed. Upon the examination of the evidence it becomes clear that American claims about the unjustness of the impressment of naturalised American citizens are wrong. While there was a dispute if naturalisation could occur, the fact is that the American government loudly disputed the British right to reclaim a large number of naturalised sailors when by the laws of America these sailors were not naturalised.

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## Introduction

American scholars often introduce the War of 1812 as the second war for American independence. This moniker is accurate from an American perspective reflecting the general sentiment of many Americans in 1812. Americans viewed Britain with anger and contempt for its restrictive policies. Historians have in great detail examined the causes of the outbreak of war between the two nations in 1812. Out of this examination the first explanation emerged for the outbreak of war: that of impressment; American seamen forcibly taken from their ships to serve in the Royal Navy. Historians of this school maintain that the impressment of American sailors challenged the sovereignty of America to the point where James Madison had little choice but to declare war. Firstly, for the injury suffered to national pride. Secondly, to display that citizens and ships travelling under the American flag were indeed protected. Thirdly, that America's sovereignty was worth something.<sup>1</sup> Later historians assert that congressmen and senators newly elected from western and southern states pushed through the declaration of war. These representatives had ulterior motives such as the promise of carving out new American territories in Canada and to halt British sponsored Indian raids. Despite this new interpretation, these historians conceded that the anger over impressment played a part in outbreak of hostilities.<sup>2</sup>

Notably absent from past studies are British perspectives. The lack of British interest in the subject is a reflection on British attitudes found during the period. The British saw the War of 1812 as insignificant given the greater struggle in Europe. Another notable lack of enquiry regards the legality and right of impressment and the role of citizenship in impressment. Previous studies on the impressment of American sailors pay only lip service to the right of the British to search and remove their own citizens but no focused study has been forth

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<sup>1</sup> Harry L. Coles, *The War of 1812* (Chicago, IL: University of Chicago Press, 1965).; James Zimmermann, *Impressment of American Seamen* (Port Washington, NY: Kennikat Press, 1966).

<sup>2</sup> Reginald Horsman, *The Causes of the War of 1812* (Philadelphia, PA: University of Pennsylvania Press, 1961).; Roger H. Brown, *The Republic in Peril* (New York, NY: Columbia University Press, 1964).; Bradford Perkins, *Prologue to War: England and the United States, 1805-1812* (Berkeley, CA: University of California Press, 1961).; J.C.A Stagg, *Mr Madison's War* (Princeton, NJ: Princeton University Press, 1983).

coming.<sup>3</sup> This research attempts to rectify this gap in scholarship by examining and directly contrasting the opinions of both Britain and America through legalisation, articles and in particular two treatises on the issue. This research will contain four chapters. The first chapter establishes the history of impressment in Britain with special reference to the legality of the practice. The second chapter deals with British opinion regarding impressment on the high seas. Chapter three will discuss American diplomacy and naturalisation. Chapter four will explore impressment in the negotiations at Ghent.

A number of works exist both about impressment and the causes of the War of 1812. Zimmermann's *Impressment of American Seamen* is the most extensive exploration of the subject. Denver Brunsman's thesis *The Evil Necessity: British Naval Impressment in the Eighteenth Century Atlantic World*, J.R. Hutchinson's *The Press Gang: Afloat and Ashore* and Nicholas Rogers' *The Press Gang: Naval Impressment and its opponents in Georgian Britain* are valuable sources for the history of impressment along with N.A.M Rodger's general work on the Royal Navy, *The Command of the Ocean*. The diplomacy of America is found in J.C.A Stagg's *Mr Madison War's*, Bradford Perkins' *Prologue to War* and C.T. White's *A Nation on Trial: American and the War of 1812* amongst other works. Primary sources are generally biased given the nature of the debates. Legal cases from Britain naturally look to defend impressment. Debates are also contained within *The American State Papers* and the diaries and correspondence of politicians.

At the heart of the debate regarding the right to impress naturalised American citizens are two treatises. American attitudes and legal opinion are encapsulated in *A Treatise on Expatriation* by George Hay written in 1814.<sup>4</sup> Hay was the U.S. attorney for the District of Virginia at the time and was married to Eliza Kortright Monroe, the daughter of James Monroe. Expatriation may not suggest a link to impressment but Hay immediately writes

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<sup>3</sup> Horsman, *The Causes of the War of 1812*, pp.26-28.; Perkins, *Prologue to War*, pp.83-94.; Scott Thomas Jackson, 'Impressment and Anglo-American Discord, 1787-1818', (Ph.D. thesis, University of Michigan, 1976), 72-75.; Denver Brunsman, 'The Evil Necessity: British Naval Impressment in the Eighteenth Century Atlantic World' (Ph.D. thesis, Princeton University, 2004). These works briefly discuss some of the issues regarding the extent American government was willing to allow the Royal Navy to reclaim deserters and British sailors.

<sup>4</sup> George Hay, *A Treatise on Expatriation* (Washington, D.C.: A. & G. Way, 1814).

I am well aware of the difficulties which attend this undertaking; but I am impelled to engage in it, by the hope that I may not only contribute towards the vindication of the opposition made by the United States to the British claim of impressment, but afford some aid to the great cause of freedom and humanity.<sup>5</sup>

Using the idea of expatriation Hay contends that Britain is unjustified in her practice of impressing naturalised American seamen. Britain, according to America, had no right to impress naturalised citizens because an individual could renounce his allegiance to a sovereign. *The Right and Practice of Impressment, as Concerning Great Britain and America Considered* appeared in London in 1814 after the publication of Hay's treatise.<sup>6</sup> The author of the pamphlet is unknown. The author is most likely a lawyer or a judge. The treatise may have been written as a favour to a Member of Parliament or by commission. There is also a possibility that the treatise was written to counter to Hay's treatise. The British treatise is not a point for point counter but at one point mentions *A Treatise on Expatriation* and directly refutes one of Hay's arguments.<sup>7</sup> The treatise states the case for Britain's right to impress as well as revealing British attitudes to American arguments against about the practice. The British argument is found on the belief that a British citizen could never renounce his allegiance to his sovereign. Impressment was a mainstay in American diplomacy from 1803-7 before receding into the background. Impressment returned to the fore when it was left as the visible reason for the outbreak of war. The lack of an agreement on impressment in the Treaty of Ghent subsequently remains puzzling.

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<sup>5</sup> Hay, *A Treatise on Expatriation*, p.1.

<sup>6</sup> Anonymous, *The Right and Practice of Impressment, as Concerning Great Britain and America Considered* (London, 1814).

<sup>7</sup> *Ibid.*, pp.12-14.

## A History of British Impressment

Impressment supposedly dates back to the period of Saxon Kings in English history.<sup>8</sup> The practice seemingly gained prominence under King John (1166 –1216) whose reign was marked by numerous wars requiring a steady stream of men for the navy. The practice was deeply ingrained in the feudal system where few questioned the right of the sovereign to levy armed forces; consequently there was little need for coercion. Despite John's signing of *Magna Carta*, a document that supposedly guaranteed the liberties of all Englishmen, King John continued to press men. There is evidence that Henry VIII used impressment in the face of a possible French invasion in 1545. The conclusion from this evidence is that it was the Crown's prerogative to press men into service and that this prerogative was generally accepted by English society.<sup>9</sup> The first piece of concrete legalisation regarding impressment was The Vagrancy Act (1597) which made it legal for vagrants to be pressed into service.<sup>10</sup>

Impressment was greatly expanded with the help of Samuel Pepys, a noted diarist who served as Clerk of Acts (1660-73) and Admiralty Secretary twice (1673-79, 1684-89). This expansion was in response to the Second and Third Anglo-Dutch Wars.<sup>11</sup> Noticeably in Pepys' diary he himself wrote about impressment in a very different light to his public persona, 'To the Tower several times, about the business of the pressed men [...] to see poor patient labouring men and housekeepers leaving poor wives and families, taken up on a sudden by strangers, was very hard, and that without press-money [...] It is a great tyranny.'<sup>12</sup> What is interesting about Pepys (and a recurring theme in impressment) is that Pepys distained the practice despite bearing responsibility for the expansion and continuation of it. Captain Edward Brenton who served during the French Revolutionary and Napoleonic Wars

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<sup>8</sup> J.R Hutchinson, *The Press Gang: Afloat and Ashore* (London: Eveleigh Nash, 1913), p.4.; Brunsman, 'The Evil Necessity', 22.

<sup>9</sup> Hutchinson, *The Press Gang: Afloat and Ashore*, pp.5-7.

<sup>10</sup> Royal Navy Museum, 'Impressment: The Press Gang and Naval Recruitment', [http://www.royalnavalmuseum.org/info\\_sheet\\_impressment.html](http://www.royalnavalmuseum.org/info_sheet_impressment.html).

<sup>11</sup> Denver Brunsman, 'Men of War: British Sailors and the Impressment Paradox', *Journal of Early Modern History*, 14 (2010), 29.

<sup>12</sup> Samuel Pepys, '1 July 1666', *The Diary of Samuel Pepys from 1659 to 1669* ed. Lord Braybrooke (London: Fredrick Warne and Co., 1879), <http://www.gutenberg.org/cache/epub/3331/pg3331.html>.

said of impressment 'It is impossible to describe the terror, the anxiety, the cruelty, the injustice and the grievous wrongs inflicted on society in general, by the continuance of this practice.'<sup>13</sup> This gives insight into the place of impressment with the British national psyche; that impressment was a cruel but necessary practice based on the government's right under the sovereign to forcibly levy men. This idea emerged during the Cromwellian era when standing armies were associated with tyrannical governments while navies protected freedom and liberty. In the early eighteenth century both British statesmen and scholars began to evolve this idea promoting the naval based British empire as an 'empire of liberty' compared to the vast land empires of the Spanish and Holy Roman Empires making the Royal Navy a centrepiece of British identity.<sup>14</sup>

Although accepted as a sovereign's right laws came into effect to regulate and give legitimacy to impressment. During the reign of Queen Anne *The Recruiting Act* (1703) was passed regulating impressment. The Act forbade the impressment of boys under the age of eighteen, those who were apprenticed in a trade while expanding the navy by impressing vagrants and those of no visible means.<sup>15</sup> An Act in 1706 allowed for debtors owing less than £20 to be released from jail if they served in the navy. Another Act was also passed in 1740 that stopped the impressment of men over the age of fifty-five.<sup>16</sup> The most notable legal collection of material regarding impressment is from Alexander Broadfoot's case of 1743. In this case Alexander Broadfoot, a merchant sailor, was charged with murder after a gang tried to press him. In his attempt to resist the gang he produced a blunderbuss, fired and subsequently killed an unarmed gangster. The verdict was eventually manslaughter with the judge, Sir Michael Foster, deeming the gang acted illegally due to the fact that the lieutenant who held the press warrant was not present at the time. Foster brought forth a number of

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<sup>13</sup> Edward Brenton, *Life and Correspondence of John, Earl of St. Vincent*. Vol.2 (London: Henry Colburn, 1838), p.82 quoted in N.A.M Rodger, *The Command of the Ocean* (London: W.W Norton and Company Ltd., 2004), p.500.

<sup>14</sup> David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000), chp. 4-5.; Brunsman, 'The Evil Necessity', 50- 54.

<sup>15</sup> Christopher Lloyd, *The British Seaman 1200-1860: A Social Survey* (London: Collins, 1968), p.125.; Sir Michael Foster, *A Report of Some Proceedings on the Commission of Oyer and Terminer and Gaol Delivery for the Trial of the Rebels in the Year 1746 in the Country of Surry, and of Other Crown Cases . . .* 3<sup>rd</sup>. edn, (London: E. and R. Brooke, 1792), p. 172.

<sup>16</sup> Foster, *A Report of Some Proceedings...*, p.174.



arguments for the legality of impressment. Foster argued that the right of naval impressment trumped private rights in cases of national security and that impressment was ‘a prerogative inherent in the Crown, grounded upon common law and recognised by many acts of Parliament’.<sup>17</sup> Foster went so far as to acknowledge that this service unfortunately fell almost exclusively to one occupational class but still asserted that impressment was not illegal. Foster’s judgement was reinforced in 1776 with *Rex vs. Tubbs* decision. When deciding the legality of a particular incident of impressment the King’s Bench agreed with Foster that impressment was a vestigial prerogative power, based on ‘immemorial usage.’<sup>18</sup>

What can be said about the history or the relationship between the British and impressment? Impressment had been present in British memory dating to before the Norman Conquest. Impressment was conducive with the feudal concept of levying men to serve the king. The practice continued based on the sovereign’s prerogative and eventually in the late sixteenth century parliament began to legislate the practice. Legal cases dealing with those resisting impressment, cited these Acts of Parliament as precedence for the legality of impressment. The British attempted to move impressment from the sphere of divine law to the spheres of common and civil law. The justification of impressment, however, remained with a citizen’s obligation to the Crown. Individuals did not take this lying down with numerous cases of men attempting to free themselves from impressment by challenging the law sometimes using the writ of *Habeas Corpus* and opposition could be as violent as Atlantic-wide riots.<sup>19</sup> On the eve of the French Revolutionary Wars impressment was an accepted albeit ugly practice within British society. This sentiment was to be reinforced by the incessant need for men in the coming twenty-three years of war. In 1792 British naval manpower stood at 17,361, by 1812 it had exploded to 144,844.<sup>20</sup> Regardless of any opposition (even from its own officers) the Admiralty continued with its time honoured tradition in the face of numerous conflicts,

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<sup>17</sup> Foster, *A Report of Some Proceedings...*, p.159.

<sup>18</sup> Nicholas Rogers, *The Press Gang: Naval Impressment and its opponents in Georgian Britain* (London: Continuum, 2007), p.20.

<sup>19</sup> Kevin Costello, ‘Habeas Corpus and Military and Naval Impressment, 1756–1816’, *The Journal of Legal History*, 29 (2) (2008), 215-251.; Denver Brunzman, ‘The Knowles Atlantic Impressment Riots of the 1740s.’ *Early American Studies: An Interdisciplinary Journal*, 5 (2) (2007), 324-366.

<sup>20</sup> N.A.M Rodger, *The Command of the Ocean*, p.639.

keeping with the British idea that being an island nation the navy was the protector of her and her 'empire of liberty'.

## **The British and Indefeasible Allegiance**

As the empire grew the British extended impressment to the colonies. This move had both principled and practice considerations. Practically the Royal Navy needed to man their ships to protect British territorial holdings and ensure the safety of its merchant fleet. In the age of sail crossing the Atlantic to America or the West Indies took months not weeks. It was impossible for warships to return to England to press men. Royal Navy commanders merely impressed men in colonial ports or on the high seas. Merchant captains employed men in England and traded in colonies so navy captains took the opportunity to bring their crews to full compliment. This was considered legal as the colonies were an extension of Britain. All rights of the sovereign could be exercised in the colonies. The loss of America meant that Britain had lost a large component of its economic system and reserves of manpower. The problem for Britain was only compounded by new competition on the international stage. America had an abundance of land and a steady stream of new immigrants that could make it a rival to Britain in trade. This fear would be proven to be correct in the long term and the rise in American commerce would adversely affect the supply of British seamen.

Another fear was that with an independent America British sailors would be attracted to American ships. Life in the Royal Navy was harsh. The conditions were cramped, unhygienic, damp and dangerous. Combat meant the possibility of death or imprisonment while being blown off course or incompetent navigation could end in the same way.<sup>21</sup> Discipline was brutal. Lashing was the main punishment; sailors often received twelve lashes for drunkenness. On one day a naval court heard three cases handing out a total of a thousand lashes in punishment. Thieves were given between two hundred to five hundred lashes.<sup>22</sup> This harsh treatment meant that once America gained independence many men of the Royal Navy deserted in American ports or in British ports by signing up to American merchantmen. The problem was not only confined to the Navy but also the British merchant fleet where wages were significantly lower than their American counterparts. Desertion was so widespread that it was claimed by the Admiralty that some 20,000 British sailors were serving aboard

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<sup>21</sup> N.A.M Rodger, *The Wooden World: An anatomy of the Georgian Navy* (London: Fontana Press, 1988), pp.46-68.

<sup>22</sup> *Ibid.*, p.226.

American ships by 1812.<sup>23</sup> In one farcical episode HMS *Phaeton* while carrying Anthony Merry, the new British ambassador to America, had fourteen men desert while in port at Norfolk, Virginia.<sup>24</sup> Britain was faced with the increasing dilemma of losing seaman during a period where they essential to the war effort against France.

Attempting to regain lost sailors the British began to halt American merchant ships to search for deserters. The right to search American merchant vessels on the high seas was not explicitly denied by American government. James Madison, who was the staunchest opponent of impressment, conceded that the British held this right if the correct process was adhered to.<sup>25</sup> It was considered the right of a belligerent of war (in this case Great Britain) to stop neutral ships (America) that were suspected of trading with the enemy (France) and search their hold for contraband goods and agents of the enemy.<sup>26</sup> Furthermore the American government allowed the impressment of British seamen from its ships in British ports i.e. within British territory.<sup>27</sup> The high seas, however, were an issue for debate. The British maintained that since the legal right to search and remove contraband was not denied by the Americans it was legal for British to remove their citizens as an extension of contraband. The author<sup>28</sup> of the pamphlet *The Right and Practice of Impressment as Concerning Great Britain and America considered* wrote:

if the right of search for *contraband* of war is not denied, why should the right of search for *man*,--*man*, which is, in truth, the highest species of contraband of war, because all other kinds are merely materials for his use, and useful to a belligerent in direct proportion to the number of men which it may have to employ on those materials?<sup>29</sup>

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<sup>23</sup> Perkins, *Prologue to War*, p.90.

<sup>24</sup> Horsman, *The Causes of the War of 1812*, p.26.

<sup>25</sup> Perkins, *Prologue to War*, p.89.

<sup>26</sup> Anonymous, *The Right and Practice of Impressment...*, p.15; Jackson, 'Impressment and Anglo-American Discord, 1787-1818', 88.; Zimmerman, *The Impressment of American Seamen*, p.19.

<sup>27</sup> Patrick C.T. White, *A Nation on Trial: America and the War of 1812* (New York, NY: John Wiley and Sons, 1965), p. 4.; Perkins, *Prologue to War*, pp.88-89.

<sup>28</sup> The author of this treatise is unknown. From this point onwards *The Right and Practice of Impressment...* will be referred to as 'the British treatise.'

<sup>29</sup> Anonymous, *The Right and Practice of Impressment...*, p.16.

The British claimed that their escaped sailors were effectively contraband because they were materials of war and were evading their duty. An article in *The Edinburgh Review* enforced this view maintaining that ‘the right of impressment which is invested in the sovereign [...] which entitles him to annul and disregard all contracts entered into our own merchants with persons using the sea, entitles him just as clearly to disregard any similar engagement into which such persons may have entered into with foreign merchants.’<sup>30</sup> These two passages reflect the position of Britain. Firstly, the sovereign had the absolute right to levy men to serve his armed forces. This right trumped not only any employment contract between two British citizens but also any contracts that involved one only British citizen. Secondly, any citizen trying to avoid the right of the sovereign was considered to be aiding the enemy. This classification placed deserters in the same category as guns, swords, saltpetre and foodstuffs, which could be removed from any neutral ships on the high seas. Despite the unpopularity of the searches various American newspapers agreed that Britain had the right of search and seizure.<sup>31</sup> The seizure of contraband was separate legal issue. The British searched vessels upon the high seas and removed suspected contraband, sometimes seizing entire ships if they were suspected of smuggling. This practice was a common occurrence during the Napoleonic Wars in an attempt to stop the French from equipping their armed forces through neutral trade. The seizure of contraband was regulated by the Admiralty courts as the revenue generated for the selling of these goods constituted prize money for the seizing crew. Officers could not touch this prize money until the goods or the ships were brought into a British port and an Admiralty court deemed the seizure legal.<sup>32</sup>

The owners and captains of ships were able to redress any cargo seizures through the Admiralty courts. This begs the question, if the British afforded this right of redress to cargo was it extended to individuals? The British treatise argues that this right is afforded to the sailor and the method in which Britain operates reduces the damage to American interests. Two options could occur when suspected British sailors are found on American merchant ships. Firstly, ‘to detain the ship, and send her into a British port, with a view of instituting

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<sup>30</sup> *The Edinburgh Review or Critical Review* Nov.1814... Feb.1815 (Edinburgh: Archibald Constable and Company, 1815), p.248.

<sup>31</sup> Zimmermann, *Impressment of American Seamen*, p.173.

<sup>32</sup> Alfred Burt, ‘The Nature of Maritime Issues’ in *The Causes of the War of 1812: National Honor or National Interest?* ed. Bradford Perkins (New York, NY: Holt, Rinehart and Winston, 1962), p.14.

legal proceedings on the subject;<sup>33</sup> Secondly, ‘to take the suspected individual out of the neutral ship, permitting her to continue her voyage, and reserving the case of the seaman for further inquiry, if he or the neutral state shall choose to dispute the fact of his being a British subject.’<sup>34</sup> It is ‘obvious that the latter course is that most favourable to the neutral interests.’<sup>35</sup> The British were ‘justified’ in taking this course of action given the noted opposition by Americans. Americans claimed the searches and impressment caused undue injury to Americans.<sup>36</sup> The British response was that the sailor would be given the opportunity to dispute the contention that he was a British subject. In this manner like material contraband the sailor must be found to be legally seized or else he was returned to his country of origin.

The issue of allegiance brought about an interesting legal clash about citizenship. The legal basis for impressment derived from the sovereign and that this was expanded to all citizens of the empire. Independent America, however, confused this issue. Immigration to America usually signified that immigrants would remain in America for life. Immigrants would stand to be either dual-citizens or American citizens who had renounced their British citizenship. British legal opinion stated neither of these instances could occur. The British treatise identified the American challenge to British impressment as ‘On an assertion of the right of a *natural born* subject of one state to adopt, and naturalize himself in, another; and to transfer his allegiance to the latter, to the exclusion of the former.’<sup>37</sup> The response, citing Emerich de Vattel, maintained that ‘Each individual is bound to contribute his personal means to the common strength of the society or nation’, a loss of citizens fundamentally weakened the state.<sup>38</sup> A state looks to preserve itself and by extension ‘as a means of self preservation, all its members.’<sup>39</sup> A state could not lose citizens lest it weaken itself. This principle is referred to as indefeasible allegiance, an established concept in Europe at the time. Indefeasible allegiance quite simply was the doctrine that a person was forever bound to the country of their birth and that they could not renounce their citizenship. Legal opinion enforced this in

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<sup>33</sup> Anonymous, *The Right and Practice of Impressment...*, p.20.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid., p.20-21.

<sup>37</sup> Ibid., p.4.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid., p.4-7.

Britain. Noted jurist Sir William Blackstone had written a chapter on the rights of individuals and allegiance. Blackstone states that

Natural allegiance is such as is due from all men born within the king's dominions immediately upon their birth... Natural allegiance is therefore a debt of gratitude; which cannot be forfeited, cancelled, or altered, by any change of time, place, or circumstance [...] LOCAL allegiance is such as is due from an alien, or stranger born, for so long time as he continues within the king's dominion and protection... Natural allegiance is therefore perpetual [...] therefore the prince is always under a constant tie to protect his natural-born subjects, at all times and in all countries, for this reasons their allegiance due to him is equally universal and permanent.<sup>40</sup>

The British had two different categories of allegiance. Natural allegiance which could never be removed. The sovereign was forever bound to protect his subjects and his subjects had to reciprocate this allegiance. Natural allegiance meant that also no British citizen could repudiate his citizenship. Local allegiance was the situation in which a foreign citizen was protected by the sovereign for the duration of residency. Sir John Nicholl, the King's Advocate-General, was also of the opinion that British subjects would remain so for the rest of their lives when asked for his judgement during the Monroe-Pinkney negotiations of 1806.<sup>41</sup> Nicholl in his decision maintained that expatriation was a right held by the state alone. Reinforcing Blackstone's judgement Nicholl concluded that impressment superseded any contract the sailor had with a company or other state.<sup>42</sup> Nicholl went even further than Blackstone and concluded that there were no boundaries when a nation was enforcing a subject's duty to the crown, subsequently the searching of American ships was legal.<sup>43</sup>

The British regarded citizenship as something not to be thrown off at will. If this were to occur then, 'the greatest crime known to the law of all countries, namely, HIGH TREASON, would be become a safe and profitable practice.'<sup>44</sup> 'Individual' is an important concept in

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<sup>40</sup> Sir William Blackstone, *Commentaries on the Laws of England*, Vol. 1 (London: Dawsons of Pall Mall, 1966), pp.369-70.; Hay, *A Treatise on Expatriation*, p.25.

<sup>41</sup> Troy Bickham, *The Weight of Vengeance: The United States, Great Britain and The War of 1812* (Oxford: Oxford University Press, 2012), p.60.; Zimmermann, *Impressment of American Seaman*, p.120.; Perkins, *Prologue to War*, p. 127.

<sup>42</sup> Bickham, *The Weight of Vengeance...*, p.60.

<sup>43</sup> *Ibid.*, p.61.

<sup>44</sup> Anonymous, *The Right and Practice of Impressment...*, p. 5.

understanding the British meaning of citizenship. A collective of individuals who share a common language, culture and social structure and who live in a defined territory are referred to as a nation.<sup>45</sup> The state is a legal and political body that rules the nation.<sup>46</sup> The individual enters into a social contract with the head of state (the sovereign) for protection while in return the citizens agree to pledge fealty which implicitly consists of right and duties. The British as previously explained viewed this contract as unbreakable by the subject. The sovereign held the power to break this bond by such means as a bill of attainder. The *individual* could not break this bond because his repudiation of his citizenship was not his right as he could harm the state. Furthering this idea was British treatise regarding the position of foreign volunteers in the Royal Navy

[there are] two distinct characters in every foreign seaman: -the one individual and personal, the other national. In the former character, any seaman may voluntarily enter the British service; and having thus, of his own accord, entered into an individual engagement, he is not permitted again to change his mind, and depart from that engagement. He voluntarily relinquishes his *individual* rights as a foreign citizen, and is not allowed, at his pleasure, to resume them. But the *national* character is not an individual, but a public right: it belongs less to the seaman himself than to the sovereign who has a claim to his service; and it is therefore admitted that even the voluntary entry of a foreigner into our navy cannot bar the right of his sovereign to reclaim him.<sup>47</sup>

To the British the right of citizenship lay with the sovereign; he alone could give it or take it away. A citizen could forfeit the individual rights that were inherently his but his national rights belonged to the sovereign. The sovereign was bound by duty to ensure no harm came to the state. The sovereign could not allow the individual to forfeit his citizenship because the loss a citizen harmed the state.

In summary, impressment to British came down to two things. The first was the right in a period of war to search American merchant vessels for contraband. The second was the doctrine of indefensible allegiance. In Chapter One the basis of impressment was established and the British continued in this vein all over the empire. The right to stop and search neutral ships for contraband during wartime was a legal and a widely accepted practice during the

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<sup>45</sup> Anna Stilz, 'Nations, States and Territory', *Ethics*, 121 (3) (April 2011), 574.

<sup>46</sup> *Ibid.*, 573.

<sup>47</sup> Anonymous, *The Right and Practice of Impressment...*, p. 20.



period. The British believed that the reclaiming of their seamen was correct as these men by definition were contraband. Men who attempted to escape their duties as subjects were aiding France. These subjects were subverting their duty by hiding amongst Americans or trying to obtain American citizenship. The British refused to accept this change of citizenship; a man could try and become an American citizen but if he was born British he was forever a *subject* of his sovereign. As a subject he owed his allegiance forever to the British Crown, so when found aboard American ships his undying allegiance could force him into the Royal Navy.

## America and Citizenship

British impressment had never been welcome in the Thirteen Colonies. In 1747 a Captain Knowles had sparked a three-day riot in Boston when attempting to press men. The riot was large enough to be considered the worst anti-British violence in the colonies only to be surpassed in 1765 by the Stamp Act riots.<sup>48</sup> The Colonists felt so aggrieved about impressment that it was one of their complaints against George III in the Declaration of Independence, 'He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country.'<sup>49</sup> The first incidents of the impressment of American citizens occurred in 1787 during a dispute between Britain and France over revolutions in the Netherlands and again when Britain clashed with Spain in 1790.<sup>50</sup> These incidents didn't cause undue tension between the two governments as Britain released the men promptly and offered apologies. Both governments were more concerned with their disputes over trade. The issue of trade looked set to bring the two countries to war before negotiations resulted in the Jay Treaty (1794) which settled issues of commerce but contained no mention of impressment. The Jay Treaty has been criticised for this omission. Jay, however, received no instructions regarding impressment because the British had not begun the practice on the high seas; subsequently the American government felt no need to push the issue given that Thomas Pinckney, the American ambassador, was involved in ongoing negotiations in London.<sup>51</sup> Jay had in fact secured the regulation of impressment in early negotiations. Any regulation disappeared when the British realised that America would not enter into an Armed Neutrality Pact.<sup>52</sup>

Impressment was a growing concern for the next decade but only gained heavy attention from 1803 onwards. In 1803 Britain resumed hostilities with France requiring an increase in

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<sup>48</sup> Brunsmann, 'The Knowles Atlantic Impressment Riots of the 1740s', 325.

<sup>49</sup> 'The Declaration of Independence', [http://www.archives.gov/exhibits/charters/declaration\\_transcript.html](http://www.archives.gov/exhibits/charters/declaration_transcript.html)

<sup>50</sup> Charles. R Ritcheson, 'Thomas Pinckney's London Mission, 1792-1796 and the Impressment Issue', *The International History Review*, 2 (4) (1980), 530.; Jackson, 'Impressment and Anglo-American Discord', 7.

<sup>51</sup> Jerald A. Combs, *The Jay Treaty: Political Battleground of The Founding Fathers* (Berkeley, CA: University of California Press, 1970), p.155.

<sup>52</sup> Samuel Flagg Bemis, *Jay's Treaty: A Study in Commerce and Diplomacy* (New Haven, CT: Yale University Press, 1962), p.358.

manpower. In 1801 Thomas Jefferson had been elected president. Jefferson was a member of the Democratic-Republicans who, unlike the Federalists, preferred closer relations with France and distrusted British intentions. Towards the end of 1803 James Madison, then Secretary of State, thought it would be a suitable time to negotiate with Britain to end impressment permanently. Madison sent a letter to James Monroe, the ambassador to England, expressing the hope to define contraband as defined in an agreement between Great Britain and Russia in 1801. This would define contraband as weapons only. Madison also looked to regulate the manner in which merchant ships were searched based on an Anglo-French Treaty in 1786.<sup>53</sup> In this letter Madison also informed Monroe that a bill was before Congress entitled *A Bill to Further to Protect the Seamen of the United States*. The purpose of the bill was to punish and restrict any foreign officers that impressed American seamen. This would be undertaken by denying any comfort to officers who were known to have pressed Americans. If the pressing occurred with a U.S port or within a one league of the coast the American government had the right to fine the offending officer. The President could also impose an order that prohibited any trade or aid with the guilty ship. American citizens that were found to be helping the offending party were to be prosecuted.<sup>54</sup> This bill was rewritten in the Senate and eventually its provisions would be encompassed in sections 4-6 of *An Act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction* which was ratified in March 1805.<sup>55</sup> This act allowed for ‘for the President of the United States, either to permit or interdict at pleasure, the entrance of the harbors and waters under the jurisdiction of the United States to all armed, vessels belonging to any foreign nation.’<sup>56</sup> The president possessed the power to

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<sup>53</sup> James Madison, ‘From James Madison to James Monroe, 26 December 1803’.

<http://founders.archives.gov/documents/Madison/02-06-02-0212> .

Contraband would have been defined as cannons, mortars, fire-arms, pistols, bombs, grenades, balls, bullets, firelocks, flints, matches, powder, saltpetre, sulphur, helmets, pikes, swords, sword-belts, pouches, saddles, and bridles. The proposed procedure for searching a vessel was that each ship would remain outside cannon range while no more than three men would be allowed on board and could not be searched the ship if the captain presented correct paperwork.

<sup>54</sup> James Madison, ‘From James Madison to James Monroe, 26 December 1803’.

<sup>55</sup> *The Public Statutes at Large of The United States of America*, Vol. 2, ed. by Richard Peters (Boston, MA: Charles C. Little and James Brown, 1850), pp.339-42.; Madison, James, ‘From James Madison to James Monroe, 26 December 1803’.

<sup>56</sup> *The Public Statutes at Large...*, Vol. 2, p.341.

exercise any punishment stated in the original bill but enforcement did not lie with the courts. Instead of prosecution through the legal system any enforcement would lie with the president who as leader was obligated to act in the nation's best interest. Diplomatic pressure could be leveraged to restrain punishment leaving offending undeterred from further impressment. The deterrence of impressment was heavily subject to the state of diplomatic relations.

Together with diplomatic pressure the deterrence of impressment was often influenced by personal views. The aforementioned correspondence was revealed as a personal letter when Madison a week later wrote 'The information and observations which you have as yet received from me since your arrival in London, on the impressment of our seamen, and other violations of our rights, have been in private letters only.'<sup>57</sup> This is a representation of a wider problem with American diplomacy surrounding impressment. Personal or unofficial views seemed to be the underlying principle of official diplomacy, views which were often contradicted by the laws of the United States. Take the example of *A Bill to Further to Protect the Seamen of the United States*. The bill allowed for punishment of British officers who impressed within one league of the U.S coast. One league is three nautical miles ('three mile limit'). The three mile limit was accepted at the time by nations to be territorial waters; under the jurisdiction of the state. This had been stated as the position of the United States in 1793 by Thomas Jefferson writing in his capacity as Secretary of State.<sup>58</sup> America recognised the limits of its territorial governance yet Madison personally believed that a ship carrying its flag should be afforded the same rights as U.S territory.<sup>59</sup> Madison in his terms as Secretary of State and President, however, continued to argue on occasion that ship should be protected as an extension of territory. Madison's arguments had no legal support in his own country let alone in Great Britain. While the *ideal* of sovereignty may have been violated upon the high seas no such sovereignty (in the legal sense) as understood by nations at the time existed.

Madison's principled approach continued to permeate diplomacy. George Clinton, vice president under both Jefferson and Madison, concluded that the diplomacy of both presidents

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<sup>57</sup> James Madison, 'From James Madison to James Monroe, 5 January 1804', <http://founders.archives.gov/documents/Madison/02-06-02-0264>.

<sup>58</sup> Thomas Jefferson, 'From Thomas Jefferson to Edmond Charles Genet, 8 November 1793', <http://founders.archives.gov/documents/Jefferson/01-27-02-0295>.

<sup>59</sup> Stagg, *Mr. Madison's War*, p.15.

was set too ‘much in theory’ and not enough ‘in practical knowledge’.<sup>60</sup> Madison (having conveyed his personal stance to Monroe in England) now set about America’s official position. Madison sent an official proposal concerning possible negotiations with the British to Monroe. The letter stated the initial American demands and the expectations which America would be satisfied with. Articles III and IV were a reiteration of Madison’s early letter in which he explained the correct procedure for boarding a neutral ship and also the items which were to be classified as contraband.<sup>61</sup> Madison, therefore, had already conceded that neutral ships were allowed to be boarded by belligerents at war. Article I in its initial form stated that

No person whatever, shall upon the high seas and without the jurisdiction of either party, be demanded or taken out of any ship or vessel belonging to citizens or subjects of one of the other parties, by the public or private armed ships belonging to or in the service of the other, unless such person be at the time in the Military service of an enemy of such other party.<sup>62</sup>

Madison stated that ‘but it is to be understood that this article shall not exempt any persons on board the ships of either of the parties from being taken thereout, by the other party, in cases where they may be liable to be so taken according to the laws of nations.’<sup>63</sup> Madison was playing a dangerous game by allowing men to be taken by the ‘law of nations’. International law was only just being articulated during this period. The law of nations fell exclusively on the European conception of international law. Madison attempted to cover himself by stating that this liability did not extend to men employed of the ship at the time of search. Madison’s evoking of law of nations is representative of a wider issue. Madison genuinely thought that the law of nations and European countries were sympathetic to the American situation. This was false given that other countries practiced impressment, nor did European countries come to America’s aid in negotiations. America laboured under this illusion until the very last days of the Napoleonic Wars. Madison’s proposal proved to be extremely important to future negotiations as it was the basis for the American position right up until the outbreak of war.

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<sup>60</sup> George Clinton, ‘George Clinton to Pierre Van Cortlandt, Jr. 5 February 1808’, *Pierre Van Cortlandt Jr. Papers*, New York Public Library quoted in Stagg, *Mr Madison’s War*, p.53.

<sup>61</sup> Madison, ‘From James Madison to James Monroe, 5 January 1804’.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

The negotiations over Madison's proposal did not go smoothly. The proposal was presented to Lord Hawkesbury (Foreign Secretary) in early April 1804 but no conference was forthcoming. Negotiations were sporadic over the next two years because Monroe was often in Madrid.<sup>64</sup> Negotiations were set upon in earnest in 1806 with the Monroe-Pinkney mission. The Monroe-Pinkney proposal was an almost unaltered version of Madison's proposal.<sup>65</sup> Early negotiations appeared to fruitful when the Monroe and Pinkney agreed to expand the definition of a deserter and consented to a British proposal that a law to be passed by the U.S. Congress making it illegal for American captains to hire deserters. The British would also pass a similar law and both governments would be obligated to return any deserters to their country of origin.<sup>66</sup> Zimmermann believed that at this point in time there never had been nor would be a better opportunity to solve the issue of impressment.<sup>67</sup> However the British negotiators suddenly reversed their position under pressure from the Admiralty who maintained the practice was an absolute necessity. British ministers also intervened, thinking it an unwise political move.<sup>68</sup> By the time a treaty was submitted to Madison in January 1807 the British had given their position. They refused to give up the principles that allowed impressment on the high seas but promised to all but end the practice.<sup>69</sup> Jefferson declined to forward the treaty to the Senate for ratification because it contained no mention of impressment and was not in line with 'national sentiment and legislative policy.'<sup>70</sup> Six months later on June 22 1807 HMS Leopard halted the USS Chesapeake to search for recent deserters from H.M.S Halifax triggering a diplomatic incident known as the *Chesapeake-Leopard Affair*. The fallout almost led the two nations to war. Jefferson managed to calm the

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<sup>64</sup> Zimmermann, *Impressment of American Seaman*, p.102-5.

<sup>65</sup> Ibid., p.118.

<sup>66</sup> Ibid., p.119-20.

<sup>67</sup> Ibid., p.120.

<sup>68</sup> Anthony Steel, 'Impressment in the Monroe-Pinkney Negotiations', *The American Historical Review*, 57 (2) (1952), 361.

<sup>69</sup> James Monroe, 'To James Madison from James Monroe, 3 January 1807', <http://founders.archives.gov/documents/Madison/99-01-02-1249> ; Ibid.; Zimmermann, *Impressment of American Seamen*, p.121.

<sup>70</sup> James Madison, 'From James Madison to James Monroe, 3 February 1807', <http://founders.archives.gov/documents/Madison/99-01-02-1371> ; Zimmermann, *Impressment of American Seamen*, p. 125.

war cries in America by instituting trade restrictions against British shipping with the *Embargo Act (1807)* and the *Non-Intercourse Act (1809)*. The Monroe-Pinkney negotiations and the *Chesapeake-Leopard Affair* proved to be the last time that impressment was a mainstay of American diplomacy. America continued to protest at the practice yet it always in the background to the ongoing trade war between America and Britain.<sup>71</sup>

The American government primarily complained that impressment forced Americans to serve in the Royal Navy. The conduct of the Admiralty and its officers no doubt meant that a number of natural born American citizens were forced to serve in the Royal Navy. The serious point of contention between the two nations was the matter of who exactly was a citizen or a subject. America was a nation of immigrants and as seen in Chapter Two this caused confusion due to the doctrine of indefeasible allegiance. The process of becoming a naturalised American began with the Constitution in which Article I, Section 8 allowed Congress 'To establish an uniform Rule of Naturalisation.'<sup>72</sup> On 26 March 1790 Congress passed the first naturalisation law that allowed any free white person of 'good moral character' who had lived in or under the jurisdiction of the U.S for at least two years to become a citizen given that he/she had resided within one state for a year. An oath of allegiance had to be sworn.<sup>73</sup> This Act would be amended in June 1795 requiring a declaration to a court that the person intended to become a citizen. This declaration needed to occur three years before the application for citizenship. The period of residency was also extended to five years.<sup>74</sup> The oath was changed where the person not only had to swear an oath to uphold the Constitution but also 'that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever, and particularly by name, the prince, potentate, state, or sovereignty whereof he was before a citizen or subject.'<sup>75</sup> American law *clearly* stated that to become a citizen any previous allegiance must be revoked. Allegiance to a foreign sovereign was null and void due to the declaration of the individual. This of course was in direct contradiction to British legal

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<sup>71</sup> Zimmermann, *Impressment of American Seaman*, pp.133-34, 156-59.

<sup>72</sup> 'The Constitution of the United States',  
[http://www.archives.gov/exhibits/charters/constitution\\_transcript.html](http://www.archives.gov/exhibits/charters/constitution_transcript.html) .

<sup>73</sup> *The Public Statutes at Large of The United States of America*, Vol. 1, ed. by Richard Peters (Boston, M.A: Charles C. Little and James Brown, 1845), p.103-4.

<sup>74</sup> *Ibid.*, p.414-15.

<sup>75</sup> *Ibid.*, p.415.

opinion which stated the individual had no right to renounce his allegiance. The naturalisation law was amended in 1798. The residency period was increased substantially to fourteen years and the intention to apply had to be made five years in advance. The need to abandon allegiance to a person's native country was still required.<sup>76</sup> The last amendment to the law occurred in April 1802. The new act returned the residency period to five years and the stated intention period to three years. Documentation was also addressed with it being decided that any immigrant intending to be naturalised should register with the courts so that their age, date of birth, country of origin and their intended place of residence could be recored. The need to renounce allegiance to a person's country of origin *forever* was stressed. The Act remained the law on naturalisation until Congress passed the Naturalisation Act of 1870. America had a legal process for foreigners to become U.S. citizens from 1790. The final definition passed in 1802 a year before impressment began in earnest would appear to make it difficult for seamen to become U.S citizens. Sailors who were claimed as U.S. citizens in most cases were not naturalised. Sailors could not have resided in America for five years if they were plying their trade at sea. Certainty they could not fulfil the requirement of living in one state for an entire year.

The naturalisation laws of America fundamentally clashed with the doctrine of indefeasible allegiance. Britain maintained that such laws were over ridden by universal law. In response Americans attempted to prove the fallacy of indefeasible allegiance. Hay's *A Treatise on Expatriation* is a reflection of American opinion on impressment, naturalisation and expatriation. Hay begins by explaining that the doctrine of indefeasible allegiance is nullified by British law and British law does allow for naturalisation. Impressment is based on a lie.<sup>77</sup> The word 'expatriation' had its origins in the Roman period but to Hay it seemed that expatriation 'had its birth in the United States' due the United States declaring the right to happiness and the pursuit of liberty.<sup>78</sup> Hay defines expatriation as 'the removal of an individual from a country of which he is a citizen or subject, by which he ceases to be a citizens or a subject of that country'<sup>79</sup> Hay postulates if a man is to be citizen or ceases to be a citizen therefore citizenship must be defined, to this point Hay agrees with the British, that

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<sup>76</sup> *The Public Statues at Large...*, Vol. 2, p.153-55.

<sup>77</sup> Hay, *A Treatise on Expatriation*, p.2.

<sup>78</sup> *Ibid.*, p.2-3.

<sup>79</sup> *Ibid.*, p.3.



the citizen has both rights and duties. In the event of these right and duties perishing, citizenship perished. The connection between the citizen and the state was ended. Evidence of this is the American Revolution. The people of the American colonies severed their connection with Britain by renouncing their duties.<sup>80</sup> Hay notes however that Americans did not independently sever this connection. The Treaty of Paris is the point at which the British government assented to the renouncement of citizenship. Hay states that if a citizen or subject of one nation moves to another he surrenders the right to be a citizen because he cannot perform his duties. Hay states that a citizen has five basic duties<sup>81</sup>

1. Allegiance
2. Obedience to the laws for the prevention of crimes
3. to those which require personal service
4. to those which requirement the payment of taxes on person or property
5. to those which require a respect for the rights of other citizens

These duties Hay believes are void on immigration because a person is physically removed from Britain. A British man who resides in New York cannot be obedient to the law, personal service cannot be enforced nor taxes collected.<sup>82</sup> The citizen is unable to perform his duties so the social contract is void. Based on this argument Hay concludes ‘that expatriation is nothing more than emigration with an intention to reside, permanently, in another country.’<sup>83</sup>

Hay expected some challenge to this stance and conceded that the *fact* of expatriation does not automatically allow for the *right* of expatriation. Hay answered that the laws of England allowed for expatriation. Hay contends that the British government had never passed a law forbidding emigration despite the widespread dispersal of its citizens over the empire. Hay employs the example of Parliament granting the Highland Emigration Society an Act that increased the cost of emigrating for the highlands. This act was supposedly meant to limit emigration but it meant that Parliament regulated emigration. Parliament indirectly

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<sup>80</sup> Hay, *A Treatise on Expatriation*, p.3-5.

<sup>81</sup> Ibid., p. 18.

<sup>82</sup> Ibid., p.19.

<sup>83</sup> Ibid.

sanctioned emigration.<sup>84</sup> Hay goes on to assert that the British government are hypocritical in maintaining the doctrine of indefeasible allegiance because it allows for the complete naturalisation of persons who have allegiance to foreign sovereigns. Blackstone claimed the principle as a matter of universal law; if a British subject could not become an American citizen then no American citizen could become a British subject.<sup>85</sup> A British law passed in 1739 contradicts that assertion. This law (13 Geo II. c3) naturalised foreign seamen who had served two years on a British ship or those who had married a British subject.<sup>86</sup> This law states that all such individuals

to all intents and purposes, be deemed and taken to be natural born subjects of his majesty's kingdom of Great Britain, and have and enjoy all the privileges, powers, rights and capacities which such foreign mariner or seamen could, should or ought to have had and enjoyed, in case he had been a natural born subject of his majesty and actually a native within the Kingdom of Great Britain.<sup>87</sup>

In Hay's estimation this statute displayed that the British not only allowed for naturalisation but saw the allegiance due to naturalisation as no different from native allegiance. The British allowed allegiance to be dissolved and could not claim the right to press naturalised American citizens.<sup>88</sup> Hay's counter-part in England addressed this issue claiming the distinction between the individual and the national character as stated in the previous chapter.<sup>89</sup>

On allegiance Hay maintains that the only distinguishable characteristic between national (indefeasible) and local allegiance is the duration of time. Blackstone had written 'As the prince affords his protection to the alien only during his residence in the realm, the allegiance of an alien is confined in point of time to the duration of such his residence, and in point of locality to the dominions of the British empire.'<sup>90</sup> Hay imagined a scenario in which the

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<sup>84</sup> Hay, *A Treatise on Expatriation*, p.21-22.

<sup>85</sup> *Ibid.*, p.31.

<sup>86</sup> Hay, *A Treatise on Expatriation*, p.25.; Zimmermann, *Impressment of American Seamen*, p.22.

<sup>87</sup> *Ibid.*, pp.28-29.; *The statutes at large, of England and of Great Britain: from Magna Carta to the Union of the Kingdoms of Great Britain and Ireland*, Vol.9, ed. by John Raithby (London; George Eyre and Andrew Strachan, 1811), p.661

<sup>88</sup> Hay, *A Treatise on Expatriation...*, p.30.

<sup>89</sup> Anonymous, *The Right and Practice of Impressment...*, p. 20.

<sup>90</sup> Blackstone, *Commentaries*, Vol. 1, p. 370.; Hay, *A Treatise on Expatriation*, p.40.

French invaded England. A Frenchman who had lived in Britain for a number of years followed the doctrine of indefeasible allegiance and aided the French army. The Frenchman would be condemned as a traitor. The Frenchman could defend himself by claiming he was forever under allegiance to his native country. This defence would be dismissed by the British court and he would be sentenced to death. Hay asserts his claimed in found in British law. According to Foster in a case the judges ruled ‘that if an alien, seeking the protection of the crown, having a family and effects here should during a war with his native country, go thither, and there adhere to the king’s enemies for purposes of hostility he may dealt with as a traitor’.<sup>91</sup> The British within their own laws place local allegiance over national allegiance. In addition the British are contradicting their own doctrine by condemning foreigners who follow it. Hay also considered a salient point regarding impressment and citizenship; what about non-naturalised aliens? Hay dismisses aliens as irrelevant. British law does not distinguish between the two because of the British belief in indefeasible allegiance renders no distinction between non-naturalised and naturalised aliens.<sup>92</sup> For Hay and America Britain allowed for naturalisation and ignored its own doctrine of indefeasible allegiance. This is why Britain could claim to rightfully impress naturalised American citizens.

In summary, impressment is an issue of citizenship as well as a matter of diplomacy. The right to press native born American citizens was never claimed by the British government. The right to claim naturalised Americans was. The U.S.A complained that impressment caused American citizens to fight in the Royal Navy. This is correct. The practice of the Admiralty and its officers meant that native born American citizens were pressed into British service. The real point of contention is naturalised Americans. Anthony Steel said Madison as Secretary of State wished to argue the issue as a lawsuit.<sup>93</sup> Madison was hampered by impressment being a negotiable issue to Jefferson. Madison was trying to legally argue against a practice that had stood for centuries from a country whose view on the rights of the individual and citizenship were drastically different.

Consistent with American thinking Hay charged the British with wrongly impressing men. This charge stems from the American position that men who had left Britain no longer owed

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<sup>91</sup> Hay, *A Treatise on Expatriation*., p.42.

<sup>92</sup> Ibid., pp.47-48.

<sup>93</sup> Steel, ‘Impressment in the Monroe-Pinkney Negotiations’, 369.

allegiance to the King. Hay states if these men intend to settle in America they had the protection in the U.S. as citizens. Hay ignores American law. The naturalisation law of 1802 clearly states five years of residency, one year of residency in one state and that a man must declare his intention to become an American citizen three years before his application. British seamen who served in the American merchant fleet would have failed to meet these requirements if they were at sea; they could not have been a resident of one state nor would they have resided within the territorial boundaries of the U.S. for five years. Madison himself in his 5 January letter wrote

Should any difficulty be started concerning seamen born within the British dominions, and naturalized by the UStates since the Treaty of 1783, you may remove it by observing; first that very few of any such naturalizations can take place; the law here requiring a preparatory residence of five years with notice of the intention to become a citizen entered of record two years before the last necessary formality.<sup>94</sup>

Madison, by his own admission, stated that an insignificant number of British sailors did become U.S. citizens. This is further reinforced by Albert Gallatin's (then Secretary of the Treasury) admission in 1807 that 8,400 sailors on American merchant ships were British even by American definition.<sup>95</sup> The American government based on its own laws had little right to object that a large number of naturalised American citizens were impressed. These 'citizens' by American law and by the admission of their president were almost nonexistent.

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<sup>94</sup> James Madison, 'From James Madison to James Monroe, 5 January 1804'.

<sup>95</sup> Albert Gallatin, 'Gallatin to Jefferson, 13 April 1807', *The Writings of Albert Gallatin*, Vol.1, ed., Henry Adams (Philadelphia: J.B. Lippincott, 1879),

[http://oll.libertyfund.org/index.php?option=com\\_staticxt&staticfile=show.php%3Ftitle=1953&layout=html#chapter\\_122116](http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=1953&layout=html#chapter_122116) .;

Albert Gallatin, 'Gallatin to Jefferson, 16 April 1807', *Ibid.*,

[http://oll.libertyfund.org/index.php?option=com\\_staticxt&staticfile=show.php%3Ftitle=1953&layout=html#chapter\\_122116](http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=1953&layout=html#chapter_122116) .; Perkins, *Prologue to War*, p.90.

## The Treaty of Ghent

On 18 June 1812 the U.S. Congress voted for war. Ironically on 16 June the British government announced that it would repeal the Orders in Council.<sup>96</sup> The repeal largely acquiesced to American demands and left impressment as the implied cause of the war. Despite declaring war America was more interested in using the declaration of war as leverage in foreign policy. Madison believed that the British, who were fighting on two continents, would settle quickly.<sup>97</sup> Madison's prediction was proven correct when Sir Augustus Foster, the British ambassador, approached Monroe, now Secretary of State, the day after the declaration of war. Foster asked for hostilities to be suspended until Britain received the declaration, giving time for him to negotiate. Monroe initially refused. A week later Monroe relented sending a letter to Jonathan Russell, the U.S. *Chargé d'affaires*, in London stating that if the Orders in Council and impressment were ended along with the return of all impressed American seamen there could be peace talks.<sup>98</sup> Madison in return promised to enact a law forbidding American captains from hiring British sailors. The British refused. The Foreign Secretary, Viscount Castlereagh noted the '[the British government] cannot consent to suspend the exercise of a right upon which the naval strength of the empire mainly depends.'<sup>99</sup> The British refused to yield at all on impressment.

America rejected British peace proposals. They continued to contain no mention of impressment. Castlereagh's letters in early correspondence rejected American counter proposals. Castlereagh, however, hinted that negotiations could occur, but not until the law forbidding the employment of British sailors in America was enacted.<sup>100</sup> Castlereagh wrote

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<sup>96</sup> The Orders in Council (1807) was an edict that forbade neutral countries from trading with France or any ports under French control, enforced by means of naval blockade. These Orders were the main point of contention between the U.S and Britain from 1807 onwards.

<sup>97</sup> Zimmermann, *Impressment of American Seamen*, p.187.

<sup>98</sup> James Monroe, 'Monroe to Russell, 26 June 1812', *American State Papers, Foreign Relations*, Vol. 3 (Washington, D.C.: Gales and Seaton, 1814), p.586.; White, *A Nation on Trial*, p. 131.

<sup>99</sup> Viscount Castlereagh, 'Castlereagh to Russell, 29 August 1812', *American State Papers, Foreign Relations*, Vol. 3, p.590.

<sup>100</sup> Zimmermann, *Impressment of American Seamen*, p.195.; Stagg, *Mr. Madison War's*, pp.295-6.

I cannot, however, refrain one single point from expressing my surprise, namely that as a condition preliminary even to a suspension in hostilities, the Government of the United States should have thought fit to demand that the British Government should desist from impressing British seamen from the merchant ships of a foreign state, simply on the *assurance* that a law shall hereafter be passed<sup>101</sup>

In an attempt to placate the British and bring them back to the negotiating table an act was passed in March 1813. Entitled *An act for the regulation of seamen aboard the public and private vessels of the United States* the act made it illegal to hire British seamen.<sup>102</sup> Four days after the bill was passed the American government received an offer of mediation from Tsar of Russia. America's acceptance of the offer and the passing of the act signalled a major breakthrough in peace talks.<sup>103</sup> Meanwhile America's early confidence was beginning to wane. America, failing a quick peace, had aimed for a short war in which Britain, fighting in Napoleon, would be unable to conduct an effective war in North America. The reduced war capacity of Britain, America hoped, would enable the U.S. to make quick territorial gains in Canada before forcing the British to negotiate. The American war effort, however, had been ineffective to this point. Combined with Napoleon's disastrous campaign in Russia the American government was now anxious to end the war.<sup>104</sup>

Feeling pressured America still remained ignorant of the reality of the international situation. American demands were going to be difficult to meet. Impressment was to be renounced or the negotiations were to immediately broken off.<sup>105</sup> In April 1813 a return to confidence, caused by the capture of York (Toronto), allowed Monroe to write to the delegation advising they should now demand to keep territorial acquisitions.<sup>106</sup> Madison and Monroe in this bout of confidence coupled with Madison's belief that other European nations held similar views on impressment over-estimated international support. They had both assumed that Sweden

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<sup>101</sup> Viscount Castlereagh, 'Castlereagh to Russell, 29 August 1812', *American State Papers, Foreign Relations*, Vol. 3, p.590.

<sup>102</sup> *The Public Statutes...*, p. 809.

<sup>103</sup> White, *A Nation on Trial*, p.139.

<sup>104</sup> Coles, *The War of 1812*, p.247.

<sup>105</sup> James Monroe, 'Monroe to the Plenipotentiaries of the United States, 15 April 1813', *American State Papers, Foreign Relations*, Vol.3, pp.695-700.; Coles, *The War of 1812*, p.247.

<sup>106</sup> Alfred Burt, *The United States, Great Britain and British North America* (New Haven, CT: Yale University Press, 1940) p.346.

and Russia, countries with a vested interest in neutral rights, would be supportive.<sup>107</sup> Sweden, however, was saving all of its diplomatic sway in an attempt annex Norway. Russia had seen the negative side of neutral rights when it had allied with Napoleon and wanted to avoid alienating Britain.<sup>108</sup> The British declined the Russian offer of mediation but arrangements were made for direct negotiations. In January 1814 a still confident Monroe sent instructions to the American delegation to proceed with negotiations in line with previous instructions.<sup>109</sup> Monroe and Madison remained confident that their demands would be met, reality indicated otherwise. The Napoleonic Wars were drawing to a close. This impacted heavily on American negotiations in two ways. Firstly, it meant that the practice of impressment would cease given the lack of need for sailors. Secondly, a European peace would allow Britain to direct more men and materials against America. Troops of the Sixth Coalition entered Paris on 31 March and on 11 April Napoleon abdicated. At this point the American government woke up to the fact they had no European allies to help them in negotiations, anti-American sentiment was high in Britain and they would soon have to deal with a larger British war effort.<sup>110</sup> All of this trouble for an issue that would disappear. The sum of these factors forced a reversal in American policy. On 25 June Monroe wrote a letter authorising the negotiators to remove impressment from the treaty negotiations on the condition that Britain agree to separate negotiations regarding impressment.<sup>111</sup> On 27 June Monroe completely capitulated and instructed that a treaty could be signed which contained no article on impressment.<sup>112</sup>

The Treaty of Ghent would be signed on Christmas Eve 1814 and took effect on 17 February 1815. The Treaty contained no mention of impressment. The issue that had once been a mainstay in American diplomacy, which had aroused such a swell of patriotism and was the official cause of the war, was left unresolved.

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<sup>107</sup> Stagg, *Mr Madison's War*, p.299.

<sup>108</sup> Burt, *The United States, Great Britain and British North America*, pp.347-48.; White, *A Nation on Trial*, p.143.

<sup>109</sup> James, Monroe, 'Monroe to the Plenipotentiaries of the United States, 28 January 1814', *American State Papers, Foreign Affairs*, Vol.3, pp.701-2; Zimmermann, *Impressment of American Seamen*, p. 210.

<sup>110</sup> Burt, *The United States, Great Britain and British North America*, p.350.

<sup>111</sup> James Monroe, 'Monroe to the Plenipotentiaries of the United States, 25 June 1814', *American State Papers, Foreign Affairs*, Vol.3, pp.703-4.

<sup>112</sup> James, Monroe, 'Monroe to the Plenipotentiaries of the United States, 27 June 1814', *Ibid.*, p.704.

## **Conclusion**

The impressment controversy is mythologized in American memory. Impressment was left as the foremost reason for the War of 1812. Subsequently impressment has been associated with a war that Americans regard as a second war for independence. Impressment though given its exalted status had not been a mainstay of American diplomacy since 1807 when the commencement of a trade war between America and Europe was of greater concern. Furthermore the abandonment of impressment in the Treaty of Ghent shows that America was not as committed to ending impressment as their outwardly appeared.

The American government's complaint against impressment was that American citizens were pressed. Inherent in this complaint is that impressment infringed upon national sovereignty. There were two types of American citizens involved in the impressment controversy; natural born citizens and naturalised citizens. On the former there is no debate; natural born American citizens were wrongly impressed by British officers by either design or mistake. The latter, naturalised American citizens, are the real conflict about impressment. America gave the same rights to these men as natural born citizens. To the British these men did not have the right to revoke their citizenship. The British maintained that the doctrine of indefeasible allegiance; once a British citizen always a British citizen. British sailors serving on American ships were fair game to be pressed. Impressment was the means of regaining lost seamen from American ships. The Admiralty in 1812 claimed that 20,000 seamen were lost to American ships, given that at the height of the Napoleonic Wars they needed approximately 140,000 men to serve the loss of a possible fourteen per cent of its labour pool was unacceptable.

The American response to impressment was to negotiate while simultaneously attacking Britain's stance on indefeasible allegiance. The problem was the British government had no intention of either abandoning indefeasible allegiance or impressment. The repudiation of indefeasible allegiance subsequently would have led to the downfall of impressment, inevitably leading to an increased rate of desertion amongst British sailors. During the Monroe-Pinkney negotiations when it appeared that impressment could be solved, factions of the British administration stepped in to ensure the practice continued. Conversely the Americans were willing to drop the issue of impressment if it would allow for a more



receptive Britain regarding areas of trade.<sup>113</sup> Powers to discourage impressment by punishing or refusing aid to British captains ultimately lay with the president, who could be swayed from acting if he thought that other matters would be negatively affected. This was particularly reflected in impressment moving to the background of diplomacy following the *Chesapeake-Leopard Affair* due to the urgency of the American establishment to settle matters of trade. Even when Madison, the staunchest opposition of impressment, ascended to the presidency in 1809 impressment still remained a background issue.

This research has explored the basis of impressment and the part the concepts of citizenship played in the controversy. Now at the end can anything new be said regarding impressment? Zimmermann, whose thesis informed this research to a great degree, believed that America had no basis for resisting impressment because it had not stated in law that a naturalised citizen must cast aside any previous allegiance until 1848, after the end of impressment.<sup>114</sup> This claim is false. Evidence shows that the U.S. had clearly passed laws in 1795, 1798 and 1802 that specifically stated a person must renounce allegiance to a foreign sovereign upon becoming an American citizen. This begs the question were the Americans justified when contesting naturalised sailors could not be impressed? They could and did try but the issue was that many of these citizens were *not* naturalised. American naturalisation laws clearly stated that a person must reside in a state for at least a year to qualify for citizenship, for sailors plying their trade on the sea this was impossibility. Madison himself admitted that only a few hundred sailors had been naturalised by 1814.<sup>115</sup> This is not to say that Americans did not have other valid complaints about impressment but in the instance of supposed naturalised citizens America allowed idealism to lead it to argue a position their own laws contradicted.

Impressment displayed the differences between the two countries. The issue of naturalisation comes down to differing interpretations of natural law. The sovereign's rights descended from divine law (natural law is derived from divine law) through which the British argued that impressment was legal and no subject could switch allegiance. America also argued using

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<sup>113</sup> Stagg, *Mr. Madison's War*, p.21.

<sup>114</sup> Zimmermann, *Impressment of American Seamen*, p.250.

<sup>115</sup> James, Monroe, 'Monroe to the Plenipotentiaries of the United States, 15 April 1813', *American State Papers, Foreign Affairs*, Vol.3, p.697.

natural law but from a base of Enlightenment thought in which natural law gave inalienable rights to the individual. The individual had the right to decide citizenship for himself. Despite Britain maintaining the principles behind impressment it appeared that this stance was mainly for practical reasons. Impressment must always be viewed in the context of the Napoleonic Wars. Britain was in need of sailors. If Britain gave into American demands then it lost a valuable source of manpower. Several times during negotiations Britain agreed to give up impressment but only when it would be guaranteed that Americans would refuse to hire British sailors. In this scenario Britain maintained the manpower that it needed. Impressment only became a serious issue during the Napoleonic Wars and once they were over the British maintained the right of impressment but never exercised the right en masse again. For the British impressment and inalienable allegiance were negotiable principles. They were a means to an end to ensure the Empire's survival.

Impressment is a window into the wider tensions between Britain and America during this period. Antipathy remained high after the American Revolution. Britain was still reeling from the shock that it was defeated by its own upstart colony. The British were afraid that America would grow to be an economic challenge and post-revolution restricted America's ability to trade in the West Indies. America resented this action and was infuriated that Britain did not show the proper respect especially to its sovereignty. America's resentment was deepened by the reality of the situation. Britain was the owner of a vast empire with a large navy. America was an emerging nation. America wanted its national sovereignty to be respected but Britain held the upper hand throughout negotiations. America was exhausting itself in an uphill fight. The antipathy goes deeper than just losing a war or gaining independence. Britain hated the very concept of America. The British treatise early on stated

America is a young nation, and her institutions are still younger; they have been formed on speculative notions of the individual independence and inherent rights of man, without much reference to the experience of the ancient modes of government.<sup>116</sup>

The British despised the foundation of America- individual rights and freedoms. Life, Liberty and pursuit of Happiness. America returned this antipathy. Britain was archaic, corrupt, tyrannical and European. This antipathy was why impressment was such a divisive issue. The

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<sup>116</sup> Anonymous, *The Right and Practice of Impressment...*, p.6.

clash of doctrines and rights involved was the clash of two different ideologies. Two different ideologies about government, citizens and subjects.

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